

**SERIAL 05189 RFP ELECTRONIC DATA BASE PRODUCTS AND SERVICES  
ProQuest Contract**

**DATE OF LAST REVISION: May 17, 2006**

**CONTRACT END DATE: May 31, 2016**

**CONTRACT PERIOD THROUGH MAY 31, 2016**

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC DATA BASE PRODUCTS AND SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **May 17, 2006 (Eff. 06/01/06)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

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Wes Baysinger, Director  
Materials Management

DL/mm  
Attach

Copy to: Clerk of the Board  
Susan Varscak, Library District  
Mirheta Muslic, Materials Management



## CONTRACT PURSUANT TO RFP

SERIAL 05189-RFP

This Contract is entered into this 17<sup>th</sup> day of May, 2006 by and between Maricopa County Library District ("District"), a political subdivision of the State of Arizona, and ProQuest Information and Learning ("Contractor") for the purchase of Electronic Data Base Products and Services.

### 1.0 TERM:

- 1.1 This Contract is for a term of ten (10) years, beginning on the 1<sup>st</sup> day of June, 2006 and ending the 31<sup>st</sup> day of May, 2016, so long as Contractor continues to offer the products with substantially the same format and content.
- 1.2 The District may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of fifteen (15) years. The District shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

### 2.0 PAYMENT:

- 2.1 As consideration for performance of the duties described herein, District shall pay Contractor the sum(s) stated in Exhibit "A."
- 2.2 Payment shall be made after the District's receipt of a properly completed invoice. Invoices shall follow the billing instructions contained in the account set-up. The District will establish the account set-up in concert with the Contractor.

### 3.0 DUTIES:

The Contractor shall perform all duties stated in Exhibit "B."

### 4.0 TERMS & CONDITIONS:

#### 4.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, directors, officials, and employees from and against all third-party claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless District, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes in the performance of this

Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of District.

**4.2 WARRANTY AND INDEMNIFICATION – COPYRIGHT:**

Contractor warrants and represents that it has the full right, power and authority to enter into this Contract and to grant the rights granted herein; that it has not previously exclusively licensed the interactive multimedia rights to the Material to any third party; and that District's inclusion and use of the Material as permitted in the Contract and Contractor's Licensing/Use Agreement (as negotiated) will not violate any rights of any kind or nature whatsoever of any third party. Contractor shall indemnify and hold harmless District, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fee), arising out of or in any way connected with any breach of any representation or warranty made by Contractor herein.

**4.3 WARRANTY AND INDEMNIFICATION – USE OF INTERNET:**

Contractor shall indemnify and hold District harmless from and against any third-party claims, liabilities, damages and expenses, including, without limitation, reasonable attorney's fees relating to or arising out of Contractor's breach of any of its material obligations under this Contract. Contractor shall not be liable for any third party claims based upon or arising from District's negligent operation of the System or for any indirect, incidental or consequential damages arising from the use of or inability to use the System attributable to District's negligence, provided that Contractor is not also negligent.

**4.4 PROCUREMENT CARD ORDERING CAPABILITY:**

It is the intent of District to pay via purchase order or through use of a MasterCard Procurement Card as best meets the needs of the Library District.

**4.5 NOTICES:**

All notices given pursuant to the terms of this Contract shall be addressed to:

For District:

Maricopa County Library District  
Attn: Director  
17811 N. 32<sup>nd</sup> Street  
Phoenix, Arizona 85032  
Telephone: 602-506-5751  
Fax: 602-506-4689  
E-mail: [harrycourtright@mcl.d.maricopa.gov](mailto:harrycourtright@mcl.d.maricopa.gov)

For Contractor:

Simon Beale  
Senior Vice President, Global Sales  
300 North Zeeb Road  
Ann Arbor, Michigan 48103  
Telephone: (800) 521-0600  
Facsimile: (734) 975-6430  
Email: [lettie.bennett@il.proquest.com](mailto:lettie.bennett@il.proquest.com)

**4.6 REQUIREMENTS CONTRACT:**

- 4.6.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when District identifies a need and issues a purchase order or a written notice to proceed.
- 4.6.2 District reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the District agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The District will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.
- 4.6.3 Contractor agrees to accept oral cancellation of purchase orders. Contractor shall reserve the right to confirm any such cancellation with written acknowledgement back to District.

**4.7 PRICE ADJUSTMENTS:**

Requests for reasonable price adjustments, if any, must be submitted sixty (60) days prior to the Contract anniversary date, beginning after Year Two of the Contract. Requests for adjustment in cost of service-related labor, copyright, licensing and/or materials must be supported by appropriate documentation. If District agrees to the adjusted price terms, District shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey.

**4.8 TERMINATION FOR CONVENIENCE:**

The District reserves the right to terminate the Contract in whole or in part at any time, when in the best interests of the District without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the District. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the District upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

**4.9 TERMINATION FOR DEFAULT:**

- 4.9.1 In addition to the rights reserved in the Contract, the District may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 4.9.2 Upon termination, the Contractor shall refund, to District, any fees paid Contractor up to the point of termination.
- 4.9.3 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

**4.10 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:**

Notice is given that pursuant to A.R.S. §38-511 the District may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District is at any time while the Contract or any extension of the Contract is in effect,

an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the District may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District from any other party to the contract arising as the result of the Contract.

**4.11 OFFSET FOR DAMAGES:**

In addition to all other remedies at law or equity, the District may offset from any money due to the Contractor any amounts Contractor owes to the District for damages resulting from breach or deficiencies in performance under this contract.

**4.12 ADDITIONS/DELETIONS OF SERVICE:**

The District reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the District.

**4.13 SUBCONTRACTING:**

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the District, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Contract Serial Number and identify the job project.

**4.14 AMENDMENTS:**

All amendments to this Contract must be in writing and signed by both parties.

**4.15 RETENTION OF RECORDS:**

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The District, Federal or State auditors and any other persons duly authorized by the Department shall upon reasonable written notice, have full access to, and the right to examine, copy and make use of, any and all said materials.

**4.16 AUDIT DISALLOWANCES:**

If at any time, District determines that a cost for which payment has been made is a disallowed cost, such as overpayment, District shall notify the Contractor in writing of the disallowance. District shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

**4.17 ALTERNATIVE DISPUTE RESOLUTION:**

4.17.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in

accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.17.1.1 Render a decision;

4.17.1.2 Notify the parties that the exhibits are available for retrieval; and

4.17.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.17.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.17.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

**4.18 SEVERABILITY:**

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

**4.19 RIGHTS IN DATA:**

The District shall have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder. Upon expiration or termination of this Contract, District will not retain any rights to the database(s) included in this Contract.

**4.20 INTEGRATION:**

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

**4.21 GOVERNING LAW:**

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

**4.22 ORDER OF PRECEDENCE:**

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail.

**4.23 INCORPORATION OF DOCUMENTS:**

The following are to be attached to and made part of this Contract.

4.23.1 Exhibit A, Pricing.

4.23.2 Exhibit B, Scope of Work

4.23.3 Exhibit C, ProQuest Information and Learning License Agreement.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

  
AUTHORIZED SIGNATURE

  
PRINTED NAME AND TITLE

300 North Zeeb Rd, P.O. 1346, Ann Arbor, MI 48106-1346  
ADDRESS

4/13/06  
DATE

MARICOPA COUNTY LIBRARY DISTRICT

BY: \_\_\_\_\_  
DIRECTOR, LIBRARY DISTRICT

\_\_\_\_\_  
DATE

BY:   
CHAIRMAN, BOARD OF DIRECTORS

MAY 23 2006  
DATE

ATTESTED:

  
DEPUTY CLERK OF THE BOARD 051706

MAY 23 2006  
DATE

APPROVED AS TO FORM:

  
DEPUTY MARICOPA COUNTY ATTORNEY

5/22/6  
DATE

**SERIAL 05189-RFP**

**PRICING SHEET: NIGP 95635, B0604225**

BIDDER NAME: ProQuest Information and Learning  
 VENDOR # : W000001950  
 BIDDER ADDRESS: 300 N. Zeeb Road, Ann Arbor, MI 48103  
 P.O. ADDRESS: NA  
 BIDDER PHONE #: 800.521.0600  
 BIDDER FAX #: 734.975.6430  
 COMPANY WEB SITE: www.proquest.com  
 COMPANY CONTACT (REP): Lettie Bennett  
 E-MAIL ADDRESS (REP): lettie.bennett@il.proquest.com

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL:  X  YES   NO

ACCEPT PROCUREMENT CARD:  X  YES   NO

Please note that the card must be MasterCard, Visa or American Express.

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD:   YES  X  NO   %  
 REBATE (Payment shall be made within 48 hrs utilizing the Purchasing Card)

INTERNET ORDERING CAPABILITY:  X  YES   NO  N/A  % DISCOUNT

OTHER GOVERNMENT AGENCIES MAY USE THIS CONTRACT:  x  YES   NO

NET 10	_____
NET 15	_____
NET 20	_____
NET 30	<u> X </u>
NET 45	_____
NET 60	_____
NET 90	_____
2% 10 DAYS NET 30	_____
1% 10 DAYS NET 30	_____
2% 30 DAYS NET 31	_____
1% 30 DAYS NET 31	_____
5% 30 DAYS NET 31	_____

INDICATE PERCENTAGE OF M/WBE PARTICIPATION IF ANY HERE:  N/A  %

PLEASE INDICATE HOW YOU HEARD ABOUT THIS SOLICITATION:

NEWSPAPER ADVERTISEMENT  
  MARICOPA COUNTY WEB SITE  
  PRE-SOLICITATION NOTICE (POST CARD)  
 X  E-MAIL  
 X  OTHER (PLEASE SPECIFY) telephone

**1.0 PRICES FOR MARICOPA COUNTY ONLY**

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON PER SITE LIST PRICE</u>		<u>% OFF LIST</u>
	<b>List price</b>	<b>Cost</b>	
<b>1.1</b> SIRS Knowledge Source	\$54,960 [16 sites X \$3,435]	\$49,464	10%
<b>1.2</b> SIRS Discoverer	\$12,304 [16 sites X \$769]	\$11,074	10%



**2.0 PRICES STATEWIDE (INCLUDING MARICOPA COUNTYT)**

<u>ITEM DESCRIPTION</u>	<u>PRICES BASED ON PER SITE LIST PRICE</u>		<u>% OFF LIST</u>
	List price	Cost	
<b>2.1</b> SIRS Knowledge Source	\$559,905 [163 SITES x \$3,435]	\$111,981	80%
<b>2.2</b> SIRS Discoverer	\$125,347 [163 SITES x \$769]	\$25,069	80%

**PROQUEST**

**EXHIBIT B**

**SCOPE OF WORK**

**1.0 INTENT:**

- 1.1 This Contract is for provision of electronic products and services. Products and services provided under this Contract may also become accessible for purchase by other public libraries throughout the State of Arizona. Contractor's products and services shall allow for unlimited, simultaneous access for users.
- 1.2 New contractors may be added to the County's contract(s) for these services during the term of this Contract, as necessary, in order to meet the continuing needs of the Library District.

**2.0 SCOPE OF SERVICES:**

- 2.1 Contractor shall make the following Core Subject Areas available, via the internet, to all public libraries located within Maricopa County from inside the libraries and, if applicable, via remote customer access. Maricopa County, in partnership with other government entities, has the option of extending this service to all public libraries throughout the State of Arizona. Additional Core Subject Areas may be added to this Contract as funding becomes available.

2.1.1 SIRS Knowledge Source.

2.1.2 SIRS Discoverer.

**2.2 COPYRIGHT:**

The Contractor is responsible to legally obtain copyright to items offered in the products.

**2.3 TAX:**

2.3.1 Libraries in the State of Arizona are exempt from any out-of-state tax on the purchase of books, electronic information and audio/visual materials. Tax Exempt numbers are not issued by the County. A copy of the Arizona Law providing this exemption will be provided at the time of account set-up.

2.3.2 An in-state contractor may only charge the city sales tax for the city within which the Contractor is located. The exception to this is where the Arizona city has also exempted these taxes.

2.3.3 No tax on labor services:

**2.4 SERVICE DELIVERY:**

It shall be the Contractor's responsibility to meet the service delivery requirements. Maricopa County reserves the right to obtain services on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

**2.5 TRAINING:**

Contractor will provide training, at no additional cost, to Library staff in the use of Contractor's online databases at locations agreed upon by the individual library system and Contractor, at

**PROQUEST**

**EXHIBIT B**

**SCOPE OF WORK**

mutually agreed upon dates and times, on an as-needed basis. Equipment, location of training and publicity of training will be the responsibility of the individual library system.

Additional training will be conducted annually or when there is a major change to the database(s) user interface upon request at no additional cost to County.

**2.6 STATISTICS:**

Contractor shall provide or make available monthly usage statistics per library at no additional cost to the libraries.

**2.7 REMOTE ACCESS:**

Contractor shall provide remote access to authenticated library users.

**2.8 SIMULTANEOUS USERS:**

Contractor shall provide unlimited, simultaneous users access.

ProQuest Information and Learning

Maricopa County

Sales Territory Number:

Before you use ProQuest Information and Learning Company's electronic products, whether marketed under the ProQuest, Chadwyck-Healey, bigchalk, Micromedia, Softline, Heritage Quest, UMI or other proprietary brands, you need to understand and agree to this Electronic Products License Agreement that governs your use of it. After reading the Agreement you must accept it by signing your name. If you have questions, please call ProQuest Information and Learning at 1-800-521-0600, extension 2971. Please retain a copy of the Agreement and keep it in your files.

4.01.2003/jcd

I agree to be bound by the following Terms and Conditions.

<b>Authorization by ProQuest Information and Learning Company (Licensor):</b>  Signature: _____ Name: _____ Title: _____ Date: _____ Signed: _____		<b>Authorization by Customer (Licensee):</b>  Institution: _____  Signature: _____ Name: _____ Title: _____ Date: _____ Signed: _____	
Duly Authorized Signature		Duly Authorized Signature	

# **TERMS AND CONDITIONS**

If you are the representative of your firm, institution, or organization, all references to "you" in this Agreement refer to the entity that you represent. By accessing or using the product(s) you agree that you and your Authorized Users are bound by these terms and conditions.

## 1) **License:**

- a) Subject to the terms of this Agreement, ProQuest Information and Learning Company ("ProQuest") hereby grants you a non-exclusive, non-transferable license to have access to and use the on-line, FTP electronic feed or CD-ROM products provided by ProQuest to you as listed in the attached Fee Schedule, attached invoice or accepted purchase order (the "Products"). You do not acquire any ownership interest or rights in the Products and associated materials and all such rights and interests remain in ProQuest and its licensors. This License is granted to you at your principal location for the type(s) of access (whether remote or on-site only), number of simultaneous users and the network configuration specified on the Fee Schedule; additional authorized sites or locations must be listed on the Additional Sites/Member Libraries Schedule.
- b) You will use the Products solely for your own personal or internal use. You will not publish, broadcast or sell any materials retrieved through the Products or use the materials in any manner that will infringe the copyright or other proprietary right of ProQuest or its licensors. You may not use the Products to execute denial of service attacks nor may you perform automated searches against ProQuest's systems to the extent such searches unduly burden ProQuest's systems (including, but not limited to automated "bots" or link checkers). You may print and make copies of materials retrieved through the Products only as permitted in Section 1 (d) of this Agreement. You represent and warrant to ProQuest that you will not use the Products or any material retrieved from the Products to create products or perform services which compete or interfere with the publications and services of ProQuest or its licensors.
- c) Notwithstanding the previous paragraph, if you represent a public library, educational institution, governmental agency or non-profit institution allowing public access to data and

information, then, subject to any special restrictions of the copyright owner, you may provide public access to and retrieval of data and information through the Products by or for walk-in public users while on-site. You will limit such use to the customary services provided to patrons and you will not re-distribute the materials retrieved from the Products or provide access to the Products to other libraries or third parties either directly or indirectly, unless specifically authorized by ProQuest.

- d) You may create printouts of materials retrieved through the Products via on-line printing, off-line printing, facsimile, or electronic mail. All reproduction and distribution of such printouts, and all downloading and electronic storage of materials retrieved through the Products shall be for your own internal or personal use. Downloading of all or parts of the Products in a systematic or regular manner so as to create a collection of materials comprising all or part of the Products is strictly prohibited whether or not such collection is in electronic or print form. Notwithstanding the above restrictions, this paragraph shall not restrict your use of the materials under the doctrines of "fair use" or "fair dealing" as defined under the laws of the United States or England, respectively.
  - e) Individual content providers or licensors may have conditions of use applicable solely to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content and shall not materially alter your use of the Products.
  - f) If your subscription allows you to provide remote access to the Products, you will limit access to the Products to Authorized Users (defined below) through the use of user identification numbers and passwords, IP address verification or other secure method of user verification. You will immediately notify ProQuest if you believe one or more of your secure access method(s) is being misused. If you authorize fee-per-article access to materials outside your subscription bundle, you are responsible for all charges incurred by users accessing the on-line products through your designated secure access method(s). The term "Authorized User" means: (1) For public libraries: library staff, individual residents of a reasonably defined geographic area in addition to walk-in patrons while on-site; (2) For schools and academic institutions: currently enrolled students, faculty and staff in addition to walk-in patrons and visiting scholars while on-site; and (3) For other types of organizations: employees, independent contractors and other temporary workers while performing duties within the scope of their employment or assignment.
- 2) **Privacy.** To the extent there are any privacy or other laws and regulations restricting the collection, use and distribution of personally identifiable information, ProQuest makes no representation as to whether any such laws and regulations may require you to obtain consent from any Authorized User (or the parent or guardian of such user) in your administration of Authorized Users access to the Products and/or services licensed hereunder. The Products and services provided by ProQuest typically do not require the entering or capture of personally identifiable information by or for the use of ProQuest.
  - 3) **Fees and Payments.** You will pay the fees for the Products as shown on the applicable Fee Schedule, attached invoice, or accepted purchase order. If you are obtaining access to Products on a fee-per-article basis, ProQuest may update and supply revised per-article fees to you from time to time. You will pay the fees for the Products within thirty (30) days of your receipt of the ProQuest invoice. Firm U.S. Government orders require a valid purchase order and advance payment or payment in accordance with FAR 52.213.2.
  - 4) **Term and Termination.**
    - a) For subscription based Products, this Agreement shall continue until the Expiration Date listed on the Fee Schedule, an attached invoice or an accepted purchase order to this Agreement or, if the subscription is renewed, until the new Expiration Date. In the case of Products for which a one-time license fee is paid for continual or perpetual access to the

materials, the license shall terminate only upon your breach of this Agreement. For fee-per-article or other transactional based access, this Agreement will continue until terminated by either party upon at least ten (10) days prior notice to the other. ProQuest may suspend delivery of Products to you if you fail to comply with your obligations under this Agreement and ProQuest can pursue any other legal remedy available to it.

- b) Except for ProQuest® Image Databases (defined below), you may retain the most recent version of the CD-ROMs or FTP electronic feeds supplied to you during your subscription term. You shall destroy all superseded versions of the CD-ROM or FTP electronic feeds. All use of the CD-ROMs and FTP electronic feeds after subscription expiration is subject to the license granted under this Agreement. In the case of CD-ROM or FTP electronic feeds for which a one-time license fee is paid for continual or perpetual access to the materials, you may retain the CD-ROM or FTP electronic feed unless your license is terminated due to your breach of this Agreement. If you breach any term of this Agreement, ProQuest may, in addition to its other legal rights and remedies, terminate the license granted and upon written notice of such termination you shall certify the destruction of all copies of the Product(s) in your possession, including the CD-ROMs or FTP electronic feeds as well as any downloaded copies of the licensed materials or software.
- 5) **ProQuest® Image Databases.** (applies only if you are subscribing to a ProQuest® Image Database) "ProQuest® Image Databases" means databases marketed under the ProQuest® brand and provided in tangible medium such as CD-ROM or FTP electronic feed medium, that contain electronically scanned facsimile reproductions of the materials that are in addition to the abstract, index and/or full-text of the materials contained in the database. For CD-ROM Image Databases marketed under the ProQuest® brand, you will download the usage information to the tracking diskette and return the diskette to ProQuest as requested. Upon expiration or termination of this Agreement, you will return or destroy any ProQuest® Image Databases according to the instructions provided by ProQuest. You will certify to ProQuest the return or destruction of ProQuest® Image Databases if requested. If you want to continue to use the ProQuest® Image Databases after expiration of this Agreement, you will have to enter into a separate agreement with ProQuest.
- 6) **Linking.** Subject to Publisher Restrictions, you may link to search results or materials contained in the Products licensed to you. The security embedded in these links is your responsibility and only on-site users and/or Authorized Users are permitted access to the Products or the materials contained therein consistent with Sections 1(b) and 1(f) of this agreement. With respect to any original materials and third party materials that may be presented in conjunction with links into the Products, you represent that you have all rights necessary to use these third party materials.
- 7) **Proprietary Rights.** All intellectual property rights, including without limitation, trade secrets, copyrights and patent rights to any software, materials, databases or hardware supplied to you by ProQuest will remain the sole property of ProQuest or its licensors, and no title or license right is granted to you except as expressly set forth in this Agreement.
- 8) **Additional Materials.** From time to time during the term of this Agreement, ProQuest may add, delete or modify information, databases, materials, capabilities or services to the Products with or without notice to you. ProQuest will announce substantial changes to the materials available on the on-line systems on its electronic mailing list service. All such information, databases, materials, capabilities and services shall be subject to the terms and conditions of this Agreement at the time they are added to the Products and shall not materially alter your use of the Products.

9) **Hardware and Software.**

- a) ProQuest may supply software from time to time for use in connection with the Products. ProQuest may designate that certain hardware and software are capable of operating compatibly with the Products, but such designation means only that the hardware or software appears to meet the necessary requirements of the Products. PROQUEST SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY PROQUEST WITH THE PRODUCTS AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE PRODUCTS.
- b) You are responsible for local telecommunication connections if they are needed and the charges therefore.

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